S.B.CIVIL SECOND APPEAL NO.10/2006

Narendra Singh
vs.
Smt. Fateh Kunwar and others.

DATE OF JUDGMENT ::: 20.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. PS Bhati, for the appellant.

Mr. Manish Pitaliya, for the respondents.

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Heard learned counsel for the parties.

Learned counsel for the appellant vehemently submitted that the original suit was filed on the ground of personal bonafide necessity of plaintiff Pran Lal. He died and thereafter, the legal representatives of Pran Lal who are ladies, widow of Pran Lal and daughter-in-law of Pran Lal, sought decree for eviction of tenant/appellant on the same ground of business which initially Pran Lal wanted to start.

According to learned counsel for the appellant, both the ladies cannot run the business as they have no experience. It is also submitted that the courts below committed serious error of law in holding that the appellant could not have come to the shop to run the business in view of the fact that he was in service at Mehasana and thereafter, at Bhilwara. According to learned counsel for the appellant, the appellant was doing the

business with the help of his father and servants and he used to do business and particularly, he himself actively participated in the business on saturdays and sundays. In view of the above, the two courts below committed illegality in decreeing the suit of the plaintiff.

I have considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below.

Admittedly, the appellant tenant joined the service and his service in school at Mehasana could not have allowed to carry on the business. Further, his service at Bhilwara also could not have allowed him to do business at Bhilwara. When the two courts below, after appreciation of evidence, reached to the conclusion as mentioned above, then this finding of fact cannot be interfered by this Court. Further, two courts below found that the plaintiffs proved their need of suit shop. No ground is made out for interference by this Court while exercising jurisdiction under Section 100 CPC.

In view of the above, no substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant prayed that sufficient time may be granted to vacate the suit premises for which learned counsel for the respondents has

serious objection.

Looking to the totality of the facts, this Court deems that the appellant be granted some time to vacate the suit shop.

Therefore, it is ordered that in case, the appellant furnishes a written undertaking before the trial court within a period of one month that he shall hand over the vacant possession to the landlord by or before 31.1.2007, shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.2.2007. The appellant shall also deposit the rent month by month by 15th day of each succeeding month of his tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya